

RECEIVED
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

2005 AUG -2 A 10: 46

TRAVELERS PROPERTY CASUALTY)
COMPANY OF AMERICA f/k/a The)
Travelers Indemnity Company of Illinois,)
as subrogee of Tuskegee University, and)
TUSKEGEE UNIVERSITY,)

Plaintiffs,)

v.)

ONESOURCE FACILITY SERVICES,)
INC.,)

Defendant.)

Case No. CV-

3:05cv618-T

PLAINTIFFS' MOTION FOR REMAND

Plaintiffs, Travelers Property Casualty Company of America, f/k/a The Travelers Indemnity Company of Illinois ("Travelers") and Tuskegee University, hereby file their Motion for Remand of the above-styled action to the Circuit Court of Macon County, Alabama, as provided by Title 28, Part IV, Ch. 89 of the United States Code, 28 U.S.C. Sec. 1441, et. seq., and state as follows:

1.

This action is a civil action in breach of contract and tort for general and special damages and expenses. All claims arise from water damages suffered as a result of the actions of the defendant, OneSource Facility Services, Inc. ("OneSource"). The plaintiffs filed the action in the Circuit Court of Macon County, Alabama, on August 26, 2004. Initially, plaintiffs also included as defendants Burch Corporation of America and Burch Corporation, both Alabama corporations. However, as discovery progressed, plaintiffs determined that these two defendants were not responsible for maintaining or repairing the equipment that failed and caused the water damage, and they were voluntarily dismissed as defendants by the plaintiffs on June 28, 2005.

2.

On or about June 29, 2005, OneSource served counsel for plaintiffs with a Notice of Removal, contending that, due to the dismissal of the two Alabama corporations, diversity of citizenship now exists between the defendant and the plaintiffs in that Tuskegee University is an Alabama corporation, Travelers is a Connecticut corporation, and OneSource is a Delaware corporation with its principal place of business in Atlanta, Georgia, and that the amount in controversy exceeds \$75,000.

3.

Even assuming OneSource's allegations regarding the requirements for diversity are true, prior to this lawsuit, OneSource entered into a contract with Tuskegee University wherein it agreed that venue for any legal proceedings involving the contract would be brought and maintained in the "City of Tuskegee, Macon County, Alabama".

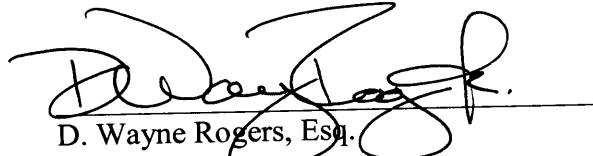
4.

The law allows parties to a contract to agree to the venue of the court to hear any disputes or legal proceedings arising out of disputes involving the contract prior to the institution of proceedings. As such, OneSource, in its contract with Tuskegee University, waived its right to remove any action from any court located in Macon County, Alabama, to any other court that might otherwise have jurisdiction over this matter.

WHEREFORE, the plaintiffs respectfully request that this Honorable Court REMAND this action to the Circuit Court of Macon County, Alabama, and order payment of just costs and expenses incurred by Plaintiffs as a result of the removal.

This 15th day of August, 2005.

Respectfully submitted,



D. Wayne Rogers, Esq.
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Attorney for Plaintiffs


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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel of record in the foregoing matter with the attached document, Plaintiffs' Motion for Remand, by depositing in the United States Mail, with sufficient postage thereon, addressed as follows:

Patrick L. Sefton, Esq.
SASSER, BOLTON, STIDHAM & SEFTON, PC
PO Drawer 4539
Montgomery, Alabama 36103-4539

This, 1st day of August, 2005.



OF COUNSEL